

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-042-17-1-5-02211-17
Petitioners: Thomas and Gail Turey
Respondent: Lake County Assessor
Parcel: 45-16-22-104-007.000-042
Assessment Year: 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Tureys contested the 2017 assessment of their property located at 12557 Pennsylvania Place in Crown Point. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the residential property at \$293,600 (\$49,400 for land and \$244,200 for improvements).
2. The Tureys filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 10, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on the Tureys’ petition. Neither she nor the Board inspected the Tureys’ property.
3. Thomas Turey appeared pro se. The Assessor appeared by Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Exhibits:

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| Petitioner Exhibit 1: | Form 115 Notification of Final Assessment Determination |
| Petitioner Exhibit 2: | Form 131 Petition for Review of Assessment |
| Petitioner Exhibit 3: | Assessment trends |
| Petitioner Exhibit 4: | Information on the effect of location on a busy road |
| Petitioner Exhibit 5: | Sales of properties backing up to a busy road |
| Petitioner Exhibit 6: | Comparable No. 1 with discussion |
| Petitioner Exhibit 7: | Comparable No. 2 with discussion |
| Petitioner Exhibit 8: | Comparable No. 3 with discussion |

Petitioner Exhibit 9: Average price per square foot of comparable properties
Petitioner Exhibit 10: Summary of Petitioners' Contentions

Respondent Exhibit 1: Property record card for the Tureys' property
Respondent Exhibit 2: Spreadsheet of sales in Pine Hill and Schmidt Farms
Respondent Exhibit 3: Spreadsheet of sales on the east side and the west side of Pennsylvania Place
Respondent Exhibit 4: Price per square foot analysis of the Tureys' property versus comparable properties

- b. The official record for this matter also includes the following: (1) all pleadings, briefs, motions and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and 4) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. Here, the property's assessment did not increase by more than 5% from 2016 to 2017. The Tureys therefore bear the burden of proof.

SUMMARY OF CONTENTIONS

7. The Tureys' case:
- a. Two-story and multi-story homes are in high demand, but the Assessor has under-assessed them when compared to their sales prices. In contrast, there is not much demand for basic three bedroom, two bath ranches in the Tureys' subdivision, but the sales prices for those homes indicate they are over-assessed. *Turey testimony; Pet'r Ex. 3.*
- b. The Tureys' property backs up to Delaware Road, which at one time was a country road, but is now a busy thoroughfare. The traffic noise affects both their enjoyment of the property and its market value. Zillow indicates that busy streets affect selling prices by 5% to 25% and homes on busy streets take longer to sell. Trulia says that busy streets always affect resale value and to expect a 10% discount. The Tureys offered six examples comparing the sales prices for properties located on a busy road against purportedly similar properties that are not:

- 12657 Pennsylvania Place (backs up to Delaware Road) sold for \$342,500. 12810 Pennsylvania Street, which is the same model of home, sold for \$359,000—a 4.8% difference;
- 12617 Pennsylvania Place (backs up to Delaware Road) sold for \$329,000. 12794 Connecticut sold for \$356,000—an 8.5% difference;
- 13051 Pennsylvania Place (backs up to Delaware Road) sold for \$263,956. 340 E. 130th Avenue sold for \$292,000—a 10.7% difference;
- 1335 E. 112th Avenue (backs up to 113th Street) sold for \$251,715. 11139 Ohio sold for \$266,170—a 5.75% difference;
- 12607 Pennsylvania Place (backs up to Delaware Road) sold for \$347,500. 12744 Connecticut, which is only 60 feet away but not on Delaware Road, sold for \$369,000—a 6.2% difference;
- 12401 Pennsylvania Place (backs up to Delaware Road) sold for \$238,000, while comparable homes sell for more than \$300,000.

Turey testimony; Pet'r Ex. 5.

- c. The Tureys selected three ranch homes that sold in their subdivision during 2016 to use as comparable sales. Comparable No. 1, 12713 Massachusetts Street, sold for \$434,900. The property has 2,864 more square feet than the Tureys' home, including an extra bedroom, extra full and half baths, and a third-car garage. It also backs up to a pond instead of a busy street. After subtracting the property's assessed land value of \$45,400 from its sales price and dividing the result by its square footage, the property had a sales price of \$76.00 per square foot. Applying that price to the Tureys' home produces a value of \$173,052. The Tureys then added in their 2016 land assessment of \$43,100 and applied a 4.8% location adjustment resulting in an assessed value of \$205,777. However, they are only asking for an assessment of \$282,000, which is more than fair. *Turey testimony; Pet'r Ex. 6.*
- d. Comparable No. 2, 12825 Pennsylvania Place, sold for \$295,000. It is 2,179 square feet larger than the Tureys' home, with two additional bedrooms, an extra half bath, and a second kitchen. In addition, it does not back up to Delaware Road. The Tureys subtracted the property's assessed land value of \$43,600 from its sales price and divided the result by its square footage, producing a sales price of \$56.42 per square foot. They then applied that per square foot value to their home's square footage, added in their 2016 land assessment, and made a 4.8% location adjustment. This results in a value of \$163,333. Again, they are only asking for a value of \$282,000. And if you took this sale and only made a location adjustment, its assessment would be \$280,840. *Turey testimony; Pet'r Ex. 7.*
- e. Comparable No. 3, 371 E. 128th Place, sold for \$290,000. The property is 273 square feet smaller than the Tureys' home but it has the same fireplace, vanities, fixtures, flooring, doors, trim, windows, and sunroom. It also has some exterior features the Tureys' property lacks, including a covered patio, a deck, a privacy fence, and a

whole-house generator. And a location adjustment would apply because it does not back up to Delaware Road. *Turey testimony; Pet'r Ex. 8.*

- f. The Tureys argued that the fact that Comparable No. 3 is slightly smaller than their property is not important. They offered four examples of sales of “like homes” where the home with less square footage sold for a higher price to show that differences of 300 square feet or less have little effect on the sales prices of homes. They also determined that the \$5,000 difference in the respective sales prices of Comparable Nos. 2 and 3 divided by the difference in their square footages meant that each additional square foot cost \$2.03. Multiplying that by the Tureys’ extra 273 square feet in relation to Comparable No. 3 results in a value of \$290,554. And making the 4.8% location adjustment produces an assessed value of \$276,608, which is less than the \$282,000 assessment they are requesting. *Turey testimony; Pet'r Ex. 8.*
 - g. The Tureys also calculated an average price per square foot from their three comparable sales. After subtracting their assessed land values from their sale prices, the average sale price per square foot was \$76.57. That value multiplied by their property’s 2,277 square feet equals \$174,350. With the Tureys’ 2017 land assessment added back in, the value of their property is \$223,750. But they are only asking for a value of \$282,000. *Turey testimony; Pet'r Ex. 9.*
 - h. The three comparable sales the Tureys used are the only three ranches that sold in their subdivision. The Tureys agreed that Comparable Nos. 1 and 2 are not that comparable to their property, but they used them because the county used them. Nevertheless, they maintain that Comparable No. 3 is similar to their property, with the differences in location and indoor space versus outdoor space being a wash. Just looking at location, the Tureys’ home is worth less than Comparable No. 3’s \$290,000 sales price. *Turey testimony.*
 - i. With respect to the Assessor’s presentation, the Tureys argued that the Assessor’s comparable sales include two-story homes that are not comparable to their ranch home because there is more demand for two-story homes than for small ranches. *Turey testimony.*
8. The Assessor’s case:
- a. In order to determine if the Tureys’ claim that properties along busy roads are negatively affected by their locations, the Assessor looked at a number of sales on both sides of Pennsylvania Place from 2015 to 2018. He found that properties on the east side with backyards facing Delaware Road actually sold at a higher per square foot value than the properties on the west side of Pennsylvania Place. *James testimony; Resp't Ex. 3.*
 - b. After determining that there was little difference between sales on the east and west side of Pennsylvania Place, the Assessor identified the most comparable properties

located in the Schmidt Farms subdivision that sold during 2016. The sales of the six comparable properties he relied on produced a value of \$139.16 per square foot. When applied to the Tureys' property, its assessed value would be \$316,900 or \$24,000 more than their 2017 assessment. The Assessor calculated this value using the full sales prices of his comparable sales. They do not remove land values from the sales prices because the land is included in the sales price. *James testimony; Resp't Ex. 4.*

- c. The Assessor also argued that the Tureys' Comparable Nos. 1 and 2 are not actually comparable to their property. Both comparables have fully finished basements, which is why their square footages are so high. And the higher the square footage, the lower the price per square foot. Further, below-grade square footage is not valued at the same rate as above-grade living areas. *James testimony.*

ANALYSIS

9. The Tureys failed to make a prima facie case for reducing their 2017 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2017, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
 - c. As explained above, the Tureys have the burden of proving that their requested assessment of \$282,000 is correct. In support, they offered a sales comparison approach relying on the 2016 sales of three purportedly comparable properties. The

sales comparison approach “estimates the *total value of the property* directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2 (emphasis added).

- d. To effectively use the sales comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that properties are “similar” or “comparable” do not suffice. Instead, the proponent must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. The proponent must similarly explain how relevant differences affect their values. *Id.*
- e. Here, all three of the Tureys’ comparable sales are ranch-style homes from their neighborhood. But they admitted that Comparable Nos. 1 and 2 were not very comparable to their property. Indeed, Comparable No. 1 has 2,864 more square feet than the Tureys’ home, with a finished basement, an extra bedroom, extra full and half baths, and a third-car garage. And Comparable No. 2 has 2,179 more square feet, with a finished basement, two additional bedrooms, an extra half bath, and a second kitchen. Despite acknowledging these significant differences, the Tureys did not even attempt to make adjustments to account for them.
- f. The only adjustment the Tureys applied to Comparable Nos. 1 and 2 was a 4.8% location adjustment to account for the fact that their home backs up to Delaware Street. They contend that backing up to a busy thoroughfare like Delaware Street reduces the value of their home. In support, the Tureys presented some opinions expressed in the comments sections of the “Zillow” and “Trulia” websites. But estimates posted on websites with unknown methodology are insufficient to support an adjustment. The six examples comparing the sales prices for properties that are and are not adjacent to a busy road are not probative because the Tureys failed to show that the difference in the properties’ sales prices was solely attributable to their location.
- g. There are fewer problems with Comparable No. 3, but the Tureys still failed to make adjustments for some of the differences they identified such as the covered patio. Additionally, they calculated their size adjustment by dividing the difference in Comparable Nos. 2 and 3’s sales prices by the difference in their square footages without demonstrating that square footage was the underlying reason for the difference. Moreover, their location adjustment for Comparable No. 3 suffers from the same issues discussed above.
- h. Furthermore, the Tureys offered no support for their decision to deduct their comparable sales’ assessed land values before calculating an average sales price. Again, the sales comparison approach estimates the total value of a property based on comparable sales, not just the value of its improvements. And the Tureys’ decision to simply add their own property’s 2016 or 2017 assessed land value back in to their various analyses only exacerbates the problem because they failed to offer any

probative market-based evidence to support either of those values. Consequently, even without the significant problems discussed above, we would be unconvinced that any of their calculations produced a reliable value estimate for the property as a whole. Moreover, the Tureys' methods might produce a value of \$200,000, \$230,000 or \$280,000. This does not reliably indicate the value should be the \$282,000 requested by the Tureys. While the busy street might indicate a reduction is reasonable, the Tureys have failed to quantify that in accordance with generally accepted appraisal practices.

- i. Because the Tureys offered no probative market-based evidence to demonstrate their property's correct market value-in use, they failed to make a prima facie case for reducing their property's 2017 assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct.2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2017 assessment.

ISSUED: December 6, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.